IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5415 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANOJ B PATEL & 13 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

(MR RAVI R TRIPATHI) for Petitioner(s) : 1 - 14.MR DP VORA for Petitioner(s) : 1 - 14.
MR DIPAN DESAI, AGP for Respondent(s) : 1 - 3.
NOTICE SERVED BY DS for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 18/01/2006

ORAL JUDGMENT

1.Mr.Vora, learned Counsel for the petitioners, places on record the instructions received by him dated 18.1.2006 from petitioners No.1, 3, 4, 7, 10, 11, 12, 13, and 14,

communicating to him that as they are now appointed as lecturers, they are not pressing the petition and they seek permission to withdraw the present petition.

2. Permission granted. The present petition shall stand disposed of as withdrawn qua the concerned petitioners and the petition shall now remain for petitioners No.2, 5, 6, 8, and 9 only.

3. The matter is further heard so far as the remaining petitioners are concerned. It appears that the petitioners were appointed on the post of lecturers in the respective college, but the appointment was purely on temporary and adhoc. It is not a matter of appointment after undergoing the regular selection process. Therefore, even if the contention of the petitioners is accepted based on the appointment order, the petitioners can be continued only till the regularly selected candidates are available either by way of fresh appointment or by transfer. This Court on 25.7.1997, when admitted the matter, passed the following order:

> " Rule. By way of ad-interim order, it is directed that the petitioners shall be entitled to continue on the posts of lecturers even after the end of the academic term for which the petitioners

are appointed, till the posts held by the petitioners are filled in either by transfer or by appointment of the lecturers duly selected by the Public Service Commission.

2. It is clarified that the petitioners shall not be entitled to above referred protection in case any of the petitioners does not avail of the opportunity of being selected by the Public Service Commission, as and when opportunity, such petitioner fails and is not selected by Public Service Commission. In the event of want of sufficient work load or sufficient number of students or in the event any of the petitioners is found to have committed any misconduct, the respondents shall be entitled to discharge the concerned petitioner from service in consonance with the terms of his/her appointment. Direct service is permitted."

4. It appears that thereafter qua the other petitioners namely; petitioners No.1, 3, 4, 7, 10, 11, 12, 13 and 14 the regular selection process was undertaken and has declared before this Court that they are also regularly selected and they have not pressed the matter. So far as the remaining petitioners are concerned namely;

petitioners No.2, 5, 6, 8 and 9, with a view to see that the education may not suffer, they can be allowed to continue to hold the post of lecturers until regularly selected candidates is available by way of transfer or fresh appointment.

5. It appears that the petitioners in this petition have prayed to issue appropriate directions to the respondent authority to consider the case of the petitioner for regular appointment to direct the respondent authority to appoint the petitioners on regular basis from the date of initial appointment with the consequential benefits. It is settled legal position that those who are not appointed after undergoing regular selection process cannot assert as of right for absorption in the regular cadre unless they compete with the other eligible candidates at the time when the regular selection process is undertaken. At the most, as and when the selection process is undertaken for filling up of the post of lecturers in the concerned subjects, the petitioners if they are eligible they may apply for such posts together with other eligible candidates, but the direction cannot be issued for giving the regular appointment to the petitioners, nor can the authority be directed to

appoint the petitioners on regular basis from their initial appointment.

6. Under the above circumstances, the relief as prayed by the petitioners for directing respondent authority to give regular appointment to the petitioners cannot be granted and is rejected with the direction that the petitioners may be allowed to continue to hold the posts held by the petitioners until the posts are filled up either by transfer or by appointment of lecturers duly selected by Public Service Commission.

7. Hence, subject to the aforesaid observations and directions, the petition is dismissed. Rule discharged. Direct service is permitted.

18.1.2006 **(Jayant Patel, J.)**

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